

1 JOSEPH H. HARRINGTON
2 United States Attorney
3 Eastern District of Washington
4 Stephanie Van Marter
5 Assistant United States Attorney
6 Caitlin Baunsgard
7 Assistant United States Attorney
8 Post Office Box 1494
9 Spokane, WA 99210-1494
10 Telephone: (509) 353-2767

11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 JESE DAVID CARILLO CASILLAS
17 (2),
18 GABRIELA MENDOZA VASQUEZ
19 (7),
20 BRITTANY LEE ZARAGOZA (10),
21 SALVADOR GUDINO CHAVEZ
22 (11),
23 EDGAR OMAR HERRERA FARIAS
24 (16),
25 ALFREDO MAGANA GARIBAY
26 (18),
27 JUAN BRAVO ZAMBRANO (19),
28 MIGUEL REYES GARCIA (21), and
JOSE ADRIAN MENDOZA (23),

Defendants.

4:15-CR-6049-EFS

United States Notice of
Summary Exhibit

1 The United States of America, by and through Joseph H. Harrington, United
2 States Attorney for the Eastern District of Washington, Stephanie Van Marter and
3 Caitlin A. Baunsgard, Assistant United States Attorneys for the Eastern District of
4 Washington, respectfully submits the following Notice of Summary Exhibit.
5

6 The United States provides notice pursuant to Federal Rules of Evidence, Rule
7 1006 of its intention to introduce summary testimony and evidence regarding telephone
8 toll, phone contact and GPS Ping coordinates.
9

10
11 **I. The telephone toll records, phone downloads and GPS Ping Records are**
12 **"voluminous" records as defined by Federal Rules of Evidence 1006 and therefore**
13 **appropriate for summary testimony.**
14

15 Although not a traditional summary testimony and evidence, the summary of
16 telephone toll records (phone connectivity) and cellular phone downloads from seized
17 phones is appropriate pursuant to Fed. Rule Evid. Rule 1006. Rule 1006 allows for the
18 introduction into evidence of summaries in a variety of forms, including recordings,
19 photographs, charts and calculations. To qualify under Rule 1006, the writings,
20 documents, recordings, must be "voluminous". "Voluminous" is defined in the text of
21 1006 as materials," which cannot be conveniently examined in court."
22

23
24 Additionally, in order to be admissible as summaries, several other requirements
25 must be met. First, the original documents upon which the summary is based upon
26

1 must have been made available to the other party prior to the use of the summary in
2 Court. See, *see also United States v. Johnson*, 594 F.2d 1253, 1255 (9th Cir. 1979),
3 cert. denied, 444 U.S. 964 (1979). Second, the underlying original documents must
4 themselves be admissible in order for the summary to be admissible. *Id.* at 1255-1256;
5 See also, *United States v. Catabran*, 836 F.2d 453 (9th Cir. 1988). Lastly, the summary
6 must then be authenticated. See, Christopher B. Mueller & Laird C. Kirkpatrick,
7 Evidence 315-316 (1997); See also, *United States v. Baker*, 10 F3d 1374 (9th Cir.
8 1993)(overruled on other grounds).
9

11 In *United States v. Meyers*, 847 F.2d 1408, 1412 (9th Cir. 1988), the Ninth
12 Circuit upheld the use of a chart that summarized records of long distance phone calls
13 between co-conspirators in a drug case. The exhibit used also summarized the
14 surveillance logs of two FBI teams. *Id.* The underlying phone records were admitted
15 into evidence and the surveillance logs were previously made available for inspection
16 by the defense. *Id.* Two of the surveillance agents testified at trial and were available
17 for cross examination on the accuracy of the chart. *Id.* In affirming the admission of the
18 chart, this Court held that as long as the materials upon which the chart is based are
19 admissible, the chart may be admitted into evidence even if the underlying materials are
20 not. *Id.*; See also, *United States v. Barriga*, 584 Fed Appx. 791, 793 (9th Cir. 2014).
21
22
23
24

25 In this case, the telephone toll records and phone downloads were either
26 compiled by the phone company pursuant to subpoenas or downloaded from the seized
27

1 cellular telephones pursuant to search warrants. These records have all been provided
2 in discovery and otherwise been available to the defense since discovery began in this
3 case. The United States anticipates witness testimony from representatives of the
4 phone companies who produced the telephone toll records through records custodians¹.
5 The United States also anticipates testimony from law enforcement who downloaded
6 the contents of the cellular telephones pursuant to the respective search warrants.
7 These records contain thousands of pages of telephone connectivity and are compiled in
8 different forms dependent upon the type of phone and the phone company producing
9 those records. The GPS pings also pertain to tracker warrants that extended over
10 several months. Therefore, the Ping records are likewise voluminous. Thus, the United
11 States submits the records are “voluminous” records and in their original form, difficult
12 to present to a jury in a manner that would make sense.
13
14
15
16

17 The United States would seek the admission of the original records into evidence
18 and then present the summary exhibit and testimony through Analyst Kalyn Karlberg as
19 to the telephone toll and phone download information and FBI Analyst Matthew
20 Sonnefield as to the GPS Ping information. The summary exhibits have been provided
21 to defense counsel in discovery. The United States would likewise make both
22
23
24
25

26 ¹ The United States anticipates also filing a Notice of Business Records exception with
27 certifications as to these phone company witnesses as well.

witnesses available for counsel to question prior to his testimony if there are any questions as to the source of any given piece of information in the summary exhibit.

Thus, the Government respectfully contends that, assuming the foundations laid, such a summary is properly admissible pursuant to Fed. Rules of Evid., Rule 1006.

DATED March 5, 2018.

JOSEPH H. HARRINGTON
UNITED STATES ATTORNEY

s/Stephanie Van Marter
Stephanie Van Marter
Assistant United States Attorney

s/Caitlin A. Baunsgard
Caitlin A. Baunsgard
Assistant United States Attorney

CERTIFICATION

I hereby certify that on March 5, 2018, I electronically filed the foregoing with the Clerk of the Court and counsel of record using the CM/ECF System.

Nicolas Vieth, nick@viethlaw.com
Victor Lara, vh_lara@hotmail.com
Gregory Scott, gregory@scottlaw.net
Peter Schweda, pschweda@wsmattorneys.com
Michael Felice, mike@myfelicelaw.com
Richard Smith, rasmith@house314.com
Ken Therrien, kenntherrien@msn.com
Scott Johnson, scott@johnsonorr.com

s/Stephanie Van Marter
Stephanie Van Marter
Assistant United States Attorney